



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2012- 0094

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders;

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 14 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2012-0094- using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal

Register published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at <http://Docketinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division, (202) 366-4001, or via email at fmcsamedical@dot.gov, or by letter FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 14 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicate

that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode.

Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Summary of Applications

Salvatore Gerard Adamita

Mr. Adamita is a 45 year-old CMV driver in the state of Florida. He has a history of epilepsy and has had two seizures in his lifetime; the last seizure was in 1992. He has

remained seizure free for 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 20 years. If granted the exemption, he would like to drive straight trucks or single tractor trailer trucks. His physician states he is supportive of Mr. Adamita receiving an exemption and Mr. Adamita states he feels he would operate a vehicle at the same safety level as someone who did not require an exemption.

John W. Boerth

Mr. Boerth is a 64 year-old class CML driver in the State of Wisconsin. He had brain surgery in 2002 and has since had 2 seizures, one in 2002 and the last seizure was June 2003. He takes anti-seizure medication with the dosage and frequency remaining the same for over 10 years. If granted the exemption, he would like to drive vehicles from one-half ton vans to 18,000 pound straight trucks in interstate commerce.

Michael C. Breitbach

Mr. Breitbach is a 56 year-old CMV driver in the State of Iowa. He has a history of two nocturnal seizures in his lifetime; the last seizure was in 2002. He has remained seizure free for 10 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 5 years. If granted the exemption, he would like to drive tractor trailer trucks. His physician states he is supportive of Mr. Breitbach receiving an exemption.

Sonja D. Cottle

Ms. Cottle is a 55 year-old CDL driver in the State of Wisconsin. She had brain surgery with the removal of a left frontal meningioma in September 2011. She was placed on anti-seizure medication as a preventative measure during and after the surgery. She remains on the anti-seizure medication with the dosage and frequency remaining the

same since September 2011. She has never had a seizure. If granted the exemption, she would like to return to driving semi-tractors with trailers. Her medical provider states that she believes it is safe for Ms. Cottle to return to driving CMVs.

Jeffrey Blake Davis

Mr. Davis is a 47 year-old CMV driver in the State of Maryland. He has a diagnosis of seizure disorder post aneurysm with three seizures related to the diagnosis of the aneurysm. His last seizure was August 2011. He has remained seizure free for 10 months. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 months. If granted the exemption, he would like to drive dump trucks in interstate commerce. His physician states he is supportive of Mr. Davis receiving an exemption.

Timothy Grant Edwards

Mr. Edwards is a 25 year-old driver in the state of Tennessee. He has a diagnosis of complex partial seizures. His last seizure was in 1992. He has remained seizure free for 20 years. He takes anti-seizure medication with the dosage and frequency remaining the same for 10 years. If granted the exemption, he would like to drive a service truck for his employer that weighs more than 10,000 pounds, but less than 26,000 pounds, in interstate commerce.

Juan Flores

Mr. Flores is a 40 year-old driver in the state of Massachusetts. He had a closed head injury at age 17 and has had 5 or 6 seizures in his lifetime, the last one being January 2011. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for 1 year. If granted the

exemption, he would like to drive CMVs with aerial buckets and derrick diggers to install utility poles.

Glenn Gervais

Mr. Gervais is a 49 year-old class E driver in the state of Florida, allowing him to drive a commercial non-CDL vehicle. He has had 2 seizures, one in 2009 and the last seizure was February 2011, one year ago. This seizure was the result of his physician taking him off of his anti-seizure medication. He has remained seizure free for 1 year. He takes anti-seizure medication with the dosage and frequency remaining the same for 1 year. If granted the exemption, he would like to return to driving a package delivery truck for UPS in interstate commerce.

Daryl Goodman

Mr. Goodman is a 38 year-old CDL driver in the state of New York. He had a single seizure following brain surgery to remove a tumor in March 2010. He was taking anti-seizure medication until September 2010, when his physician stopped the medication. He has remained seizure free for 2 years. If granted the exemption, he would like to drive a tractor trailer in interstate commerce.

James Gorniak

Mr. Gorniak is a 49 year-old CMV driver in the state of Wisconsin. Mr. Gorniak had a single seizure in January 2007. It was discovered he had a brain tumor which was then removed. He was given anti-seizure medication for a short time after the surgery, but has been off the medication for 5 years and has remained seizure free since 2007. His physician states he is supportive of him receiving the exemption. If granted an exemption, he would like to return to driving tractor trailers in interstate commerce.

Brian Hanson

Mr. Hanson is a 53 year-old driver in the state of Oregon. Mr. Hanson has a diagnosis of epilepsy and his last seizure was in April 2004. He has been off of anti-seizure medication for 6 years. He has remained seizure free for 8 years. If granted the exemption, he would like to attend truck driving school and drive tractor trailer with his wife, as she is a long haul driver.

Victor Marquez

Mr. Marquez is a 23 year-old driver in the state of Idaho. Mr. Marquez has had 3 seizures in his lifetime with the last being March 2003. He has been on anti-seizure medication, with the dosage and frequency remaining the same for 9 years. His physician states that he believes Mr. Marquez is a good candidate for an exemption. If granted an exemption, he would like to drive a water truck or flatbed truck in interstate commerce.

Robert J. Mooney

Mr. Mooney is a 51 year-old CMV driver in the State of Ohio. He has a diagnosis of seizure disorder and his last seizure was in 1981. He has remained seizure free since that time. He takes anti-seizure medication with the dosage and frequency remaining the same for over 20 years. If granted the exemption, he would like to drive 18-passenger busses in interstate commerce.

Gary Osley

Mr. Osley is a 36 year-old CDL driver in the state of Kentucky. He has not ever experienced a seizure. He was given anti-seizure medication as a precaution before having brain surgery to remove a mass in October 2011. He remains on the anti-seizure medication at present for a period up to one year following the surgery, October 2012. He

has remained seizure free. If granted an exemption, he would return to driving in interstate commerce.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: January 10, 2013

Larry W. Minor
Associate Administrator for Policy

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